

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 4 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DUANE LEO EHMER,

Defendant-Appellant.

No. 17-30242

D.C. No. 3:16-cr-00051-BR-10

District of Oregon,  
Portland

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DARRYL WILLIAM THORN,

Defendant-Appellant.

No. 17-30246

D.C. No. 3:16-cr-00051-BR-22

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAKE RYAN,

Defendant-Appellant.

No. 18-30025

D.C. No. 3:16-cr-00051-BR-26

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON PATRICK,

Defendant-Appellant.

No. 18-30042

D.C. No. 3:16-cr-00051-BR-9

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON PATRICK; DUANE LEO  
EHMER; DARRYL WILLIAM  
THORN; JAKE RYAN,

Defendants-Appellants.

No. 19-30077

D.C. No. 3:16-cr-00051-BR-9

Before: BERZON, COLLINS, and VANDYKE, Circuit Judges.

Submission of this appeal is vacated pending further order of the court.

Within 14 days of the entry of this order, the parties are directed to submit supplemental briefs addressing the following issues:

(1) The current versions of 50 C.F.R. §§ 26.21, 27.61, 27.65, and 28.31 were adopted effective April 2, 1976. *See* 50 C.F.R., Parts 26–28, Source notes. The listed authorities under which the regulations were issued in 1976 include both “Sec. 4, 76 Stat. 654 (16 U.S.C. 460k[-3])” and “Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd).” *See* National Wildlife Refuge System; Public Use Regulations, 41 Fed. Reg. 9166, 9168 (Mar. 3, 1976) (Part 26); *see also id.* at 9169 (Part 27); *id.* at 9171 (Part 28). Please address whether, as applied in this case, the referenced regulatory sections rest on the authority conferred in 16 U.S.C. § 460k-3 or on the authority conferred in 16 U.S.C. § 668dd, or both. In particular, does the authority conferred under § 460k-3 apply only in connection with a National Conservation

Recreational Area and, if so, does it apply in whole or in part to the Malheur National Wildlife Refuge?

(2) Please identify the specific portions of the record that show when and how the questionnaires involving jurors excluded for cause in chambers were made available to defense counsel and when the questionnaires were actually received by defense counsel.

(3) Please address what, if any, remedies would have been available if  
(a) shortly after the court's January 27, 2017 email to counsel, defense counsel had received the questionnaires involving jurors excluded for cause in chambers; and  
(b) defense counsel had then successfully challenged one or more of those exclusions before jury selection was completed.

The Government is directed to submit one supplemental brief addressing these three issues, and Appellants are directed to submit one joint supplemental brief addressing these three issues. Each such supplemental brief shall not exceed fifteen pages or 4,200 words.

In addition, within 14 days of the entry of this order, the Government's filter team is directed to submit an additional supplemental brief elaborating on the first full paragraph of 2 SER 200. This separate supplemental brief shall be filed ex parte and under seal, and shall not exceed five pages or 1,400 words.